

Notice of Allowability

Application No.

09/960,175

Examiner

Michael B Priddy

Applicant(s)

HAYES ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to telephonic interviews of 08/26 and 08/27/2004.
2. ☒ The allowed claim(s) is/are 9-18.
3. ☒ The drawings filed on 12/17/2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

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EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. James Sheridan on 08/27/2004.

The application has been amended as follows:

- A) In claim 9, in line 1 "body element for use in" has been replaced with --prosthetic total hip joint comprising--; in line 2, --femoral-- has been inserted before "stem"; in line 3, "at least one other" has been changed to --a stem--; in line 4, "at least one other" has been changed to --stem--; in line 11, --configured for seating within a medullary canal of a resected femur-- has been inserted after "wedge shape"
- B) In claim 14, in line 2, --femoral-- has been inserted before "stem"; in line 3, "at least one other" has been replaced with --a stem--; and in line 4, "at least one other" has been replaced with --stem--; and in line 11, --configured for seating within a medullary canal of a resected femur-- has been inserted after "wedge shape".
- C) In claim 15, line 5, "at least one other" has been replaced with --a stem--; in line 6, "at least one other" has been replaced with --stem--; and in line 13, --

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configured for seating within a medullary canal of a resected femur-- has been inserted after "wedge shape".

D) In claim 16, line 6, "at least one other" has been replaced with --a stem--; in line 7, --stem-- has been inserted between "said" and "element"; and in line 14 --configured for seating within a medullary canal of a resected femur-- has been inserted after "wedge shape".

E) In claim 17, line 2, --femoral-- has been inserted between "prosthetic" and "stem"; in line 3, "at least one other" has been replaced with --a stem--; in lines 3-4, "at least one other" has been replaced with --stem--; in line 13, "and" has been deleted; and in line 15, --; and wherein said body element is configured to substantially approximate the profile of a medullary canal of a resected femur so as to anchor said modular prosthetic femoral stem component therein-- has been inserted after "configuration".

F) In claim 18, in line 2, --femoral-- has been inserted between "prosthetic" and "stem"; in line 3, "at least one other" has been changed to --a stem--; in line 4, "at least one other" has been changed to --stem--; and in line 10, --configured to substantially approximate the profile of a medullary canal of a resected femur so as to anchor said modular prosthetic femoral stem component therein;-- has been inserted after "wedge shape".

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: None of the prior art of record teaches or fairly suggests the improved prosthetic total hip joint as set forth in claims 9 and 15; the improved modular prosthetic femoral stem component as set forth in claim 14; the improved method for restoring a hip joint as set forth in claim 16; a body element as set forth in claim 17; or an improved body element as set forth in claim 18.

What the Examiner considers to be the closest prior art reference, Arcand (U.S. 6,368,353 B1), teaches a humeral implant 100 comprising an anterior wall and a posterior wall, at least one of said anterior wall and said posterior wall converging toward the other on a medial side of said body element and diverging away from the other on a lateral side of said body element; and said body further comprising a lateral wall and a medial wall extending between said anterior wall and said posterior wall, said lateral and medial walls being generally parallel to each other; wherein vertices of said body element have a rounded configuration. However, the device of Arcand, as set forth in columns 1 and 2, is designed to function differently from a prosthetic total hip joint; a femoral stem component; and is in fact specifically designed to function as a humeral implant in a shoulder prosthesis. It is therefore the position of the Examiner that the humeral implant of Arcand is incapable of functioning as a prosthetic total hip joint; a femoral stem component and incapable of "approximating the profile of a medullary canal of a resected femur so as to anchor a modular prosthetic femoral stem component therein."

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael B. Priddy
Michael B. Priddy
August 27, 2004

Kevin Shaver
KEVIN SHAVER
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